



## Kevin M. Flowers, Ph.D.

Partner

Tel 312.474.6615  
kflowers@marshallip.com

Kevin M. Flowers, Ph.D., leads our Biotech/Pharma Litigation team. Over the last 24 years, he has successfully represented clients such as Amgen, Eli Lilly, Northwestern University, Illumina, Merck-Serono, Danisco, and Home Depot as first-chair trial and appellate counsel in patent cases involving products with sales in the hundreds-of-millions to billions of dollars per year. These include *Onyx Therapeutics, Inc. v. CIPLA Ltd.* (Kyprolis®); *AbbVie Inc. v. Amgen* (Humira®); *Amgen Inc. v. Hospira, Inc.* (Epogen®); *Pfizer and Northwestern Univ. v. Teva et al.* (Lyrica®); *Vanderbilt Univ. v. ICOS /Eli Lilly* (Cialis®); *Schering v. Geneva Pharms* (Claritin®); *Amgen v. Hoechst Marion Roussel and TKT*, and *Amgen v. F. Hoffmann-LaRoche* (Epogen®); *Applied Biosystems v. Illumina*, *Life Technologies v. Illumina*, and *Enzo Life Sciences v. Illumina* (all involving DNA-sequencing systems); *Cell Genesys v. ARS* and *ARS v. TKT* (endogenous gene-activation methods); and *Default Proof v. Home Depot* and *RealSource Comms. v. Home Depot* (retail gift-card systems).

Kevin has been named an “IP Star” in *Managing IP’s IP Stars Survey* (fka the *World IP Handbook and Survey*) since 2014; one of the “World’s Leading Patent Practitioners” since 2014 by *Intellectual Asset Management (IAM)* magazine; a “Leading Lawyer” by *Leading Lawyers Magazine*; and is recognized on the *Illinois Super Lawyers®* list by Thomson Reuters. Kevin has also been named a 2015–2020 “Life Sciences Star” by *LMG Life Sciences* in recognition of his outstanding work in the life sciences sector.



### Practices

- IP Litigation
- ITC 337 Investigations
- Post-Grant Patent Proceedings

### Industries

- Biotechnology & Life Sciences

- Pharmaceutical

## Representative Experience

- *Onyx Therapeutics, Inc. v. CIPLA Ltd., et al.* (D. Del. and Fed. Cir.): Kevin successfully represented Onyx in this ANDA patent-infringement case involving multiple generic drug manufacturers' versions of Onyx's cancer therapeutic Kyprolis® (carfilzomib). Following a week-long trial, Chief Judge Stark found in favor of Onyx. He represents Onyx in Cipla's appeal of this judgment to the U.S. Court of Appeals for the Federal Circuit.
- *Amgen Inc. v. Hospira, Inc.* (D. Del. and Fed. Cir.): Kevin successfully represented Amgen in this BPCIA (biosimilar) case (one of the first cases ever filed under the BPCIA, and the first BPCIA patent-infringement case to be tried to a jury) involving Hospira's biosimilar version of Amgen's blockbuster biopharmaceutical Epogen®. After a week-long trial, the jury returned a verdict in favor of Amgen, and awarded Amgen damages in excess of \$70 million. He also represented Amgen in Hospira's subsequent appeal to the U.S. Court of Appeals for the Federal Circuit, which affirmed the judgment and award of damages to Amgen.
- *AbbVie Inc. v. Amgen Inc.* (D. Del.): Kevin represented Amgen in this BPCIA (biosimilar) case involving Amgen's Amjevita™ biosimilar version of AbbVie's blockbuster biopharmaceutical Humira® (the best-selling drug in the world), in which Amgen was able to favorably settle the matter so that it will be able to market Amjevita™ prior to expiration of AbbVie's patents.
- *Pfizer Inc. and Northwestern Univ. v. Teva Pharms., et al.* (D. Del. and Fed. Cir.): Kevin represented Northwestern University, which holds several patents covering pregabalin, the active ingredient in the blockbuster drug Lyrica®, in this ANDA case against seven generic-drug-company defendants seeking to market generic versions of Lyrica®. He represented Northwestern in a two-week bench trial before then-Chief Judge Sleet in Delaware, following which Judge Sleet entered judgment in favor of Pfizer and our client on all issues. He represented Northwestern in the defendants' subsequent appeal in which the Federal Circuit affirmed all aspects of the district-court judgment.
- *Life Technologies Corp. v. Illumina, Inc.* (D. Del., S.D. Cal., and Fed. Cir.): Kevin represented Illumina in this case in which Life Tech and Illumina each alleged infringement by the other of multiple patents covering systems and methods for DNA amplification, detection, and sequencing. The action was filed in Delaware, but was transferred to the Southern District of California, where Judge Bencivengo granted our motion for summary judgment of non-infringement on all of the asserted claims in Life Tech's patents, and Judge Moskowitz denied Life Tech's motion for reconsideration of that judgment. Life Tech dismissed its subsequent appeal to the Federal Circuit.
- *Applera Corp.–Applied Biosystems Group v. Illumina, Inc.* (N.D. Cal. and Fed. Cir.): Kevin represented Illumina in this case concerning the ownership and infringement of patents covering “next-generation” ligation-based DNA sequencing methods. During a month-long trial, the jury found in favor of Illumina regarding ownership of the patents-in-suit and regarding validity of one of the patents. He successfully represented Illumina in Applera's subsequent appeal to the Federal Circuit.
- *Vanderbilt Univ. v. ICOS Corp.* (D. Del., Fed. Cir., and SCOTUS): Kevin represented ICOS (now part of Eli Lilly & Co.) in this case in which Vanderbilt sought to add its scientists as co-inventors to patents covering the manufacture, sale and use of tadalafil (the active ingredient in the blockbuster anti-impotence drug Cialis®). Following a two-week bench trial in Wilmington, Delaware, then-Chief Judge Robinson entered judgment in

favor of ICOS. He successfully represented ICOS in Vanderbilt's subsequent appeal to the Federal Circuit and petition for *certiorari* to the U.S. Supreme Court.

- *Amgen Inc. v. F. Hoffmann La Roche, et al.* (D. Mass. and Fed. Cir.): Kevin was co-lead trial counsel for Amgen in this case involving Amgen's patents covering EPOGEN®, the recombinant form of human erythropoietin ("rEPO") that stimulates the production of red blood cells and is one of the most successful biotech pharmaceutical products ever. After a six-week trial, the Boston jury returned a verdict in favor of Amgen on all counts (Judge Young had earlier granted summary judgment of infringement with respect to one of the patents-in-suit). Judge William Young entered both preliminary and permanent injunctions against the defendants. The Federal Circuit affirmed the judgment, and the case settled on favorable terms for our client shortly thereafter.

- *Amgen Inc. v. Hoechst Marion Roussel and TKT* (D. Mass. and Fed. Cir.): Kevin successfully represented Amgen in two patent-infringement trials in Boston, and two Federal Circuit appeals by the defendants, in this case involving Amgen's patents covering EPOGEN®.

- *Default Proof Credit Card System v. Home Depot* (S.D. Fla. and Fed. Cir.): Kevin successfully represented Home Depot in this multi-defendant infringement action in which Default Proof alleged that Home Depot and several other major retailers (including Wal-Mart and Starbucks) infringed a patent relating to retail gift-card systems. He obtained summary judgment of invalidity for indefiniteness (under 35 U.S.C. § 112 ¶ 6) on all asserted claims in the trial court, and was also successful in defeating Default Proof's subsequent appeal in the Federal Circuit.

- *Schering Corp. v. Geneva Pharmaceuticals, Inc.* (D.N.J. and Fed. Cir.): Kevin represented Geneva Pharmaceuticals (now Sandoz) in this multi-defendant ANDA case involving generic versions of the blockbuster drug Claritin®. On the parties' cross-motions for summary judgment, then-Chief Judge Bissell granted our motion for summary judgment of invalidity of the patent-in-suit, which the Federal Circuit affirmed in an oft-cited decision.

- *Applied Research Systems v. Cell Genesys Inc. and TKT* (D. Mass.): Kevin represented Applied Research Systems (a subsidiary of Merck-Serono) in these consolidated 35 U.S.C. 146 and patent-infringement cases involving the appeal of an interference decision on ARS's patents and CGI's patent application directed to methods of endogenous gene activation, and the alleged infringement of ARS's patents by TKT's "gene-activated" recombinant products. After then-Chief Judge Wolf granted our motion-in-limine to exclude much of CGI's evidence in the § 146 action, CGI and TKT settled the actions on very favorable terms for our client.

- *Danisco A/S et al. v. Novozymes A/S et al.* (S.D.N.Y.): Kevin represented Danisco in this case involving Novozymes's alleged infringement of Danisco's patents covering recombinant lipase enzymes and their use in industrial bread-making. Following successful motion practice, we were able to settle the case on terms favorable for our client.

- *Rogers et al. v. Zambryski et al. and Fraley et al. v. Zambryski et al.* (U.S. PTO): Kevin successfully represented Monsanto in these multi-party interferences involving pioneering claims for genetically modified plants.

- *Hyseq v. Affymetrix and Affymetrix v. Hyseq* (N.D. Cal.): Kevin successfully represented Hyseq in these cases

involving patents covering “gene chips,” which were settled on favorable terms for our client Hyseq following favorable *Markman* proceedings.

Kevin has also been successful in the following cases (\* indicates party represented):

- *Cytomedix v. Little Rock Foot Clinic\** (N.D. Ill.)
- *Finn Sugar Bioproducts v. Raytheon Engineers & Constructors\** (N.D. Ill.)
- *Innovative USA v. Softplay\** (E.D. N.Y.)
- *Livorsi Marine\* v. Gaffrig Performance Indus.* (N.D. Ill.)
- *Livorsi Marine\* v. Nordskog Performance Prods.* (N.D. Ill.)
- *Monroe Truck Equipment v. Henke Mfg.\** (N.D. Ill.)
- *Brooklyn Bottling v. Jamaica Drink\** (S.D. Fla.) (trademark infringement)
- *EMKG v. Bisco, Inc.\** (N.D. Tex.) (dental composite products)

Kevin also successfully represented clients such as Amgen and Monsanto in high-stakes interference and appeal proceedings in the Patent Office, and has served as first-chair trial counsel in trademark infringement cases.

## Background and Credentials

Previously a research scientist and teacher, Kevin is a trial lawyer with extensive, successful first-chair bench-trial, jury-trial, and appellate experience in cases involving blockbuster products. He received his undergraduate degree in biology and his Master’s degree in health education (exercise physiology) from The Ohio State University. He earned his Ph.D. from the cellular and molecular physiology program at the Pennsylvania State University College of Medicine and Graduate School. His scientific research led to eleven peer-reviewed scientific publications. Kevin earned his law degree at The Ohio State University Moritz College of Law, where he was a Managing Editor and contributing author for the *Ohio State Journal on Dispute Resolution* and spent two years as a full-time clerk in a high-profile criminal-defense firm.

Kevin serves as a Court-Appointed Special Advocate (CASA) to assist foster children, is a Big Brother in the Big Brothers/Big Sisters program, and volunteers in the Team Rubicon and Habitat for Humanity programs. On weekends, he is a competitive runner, cyclist, triathlete, cross-country ski racer, obstacle-course racer, and CrossFit athlete.

## Education

- The Ohio State University Moritz College of Law (J.D.)
- Pennsylvania State University (Ph.D.)
  - Cellular and Molecular Physiology
- The Ohio State University (M.A.)
  - Exercise Physiology
- The Ohio State University (B.S.)
  - Biological Sciences

## Bar Admissions

- Illinois

- U.S. Court of Appeals, Federal Circuit
- U.S. District Court, Northern District of Illinois, Trial Bar
- U.S. Patent and Trademark Office
- Admitted to practice pro hac vice in various district courts throughout the U.S.

## Insights

August 29, 2005

**“Incentives to foster new antibiotics are proposed”**

The National Law Journal

## Client Successes

### **Illumina Continues Critical Work in Human Genomics**

Working at the cutting edge of science and medicine, Marshall, Gerstein & Borun LLP's client, Illumina, Inc., created its Genome Analyzer, HiSeq, and MiSeq instruments to sequence DNA at extremely high speeds. When Life Technologies Corp. claimed that the sequencers infringed three of its DNA amplification patents, Marshall Gerstein's trial attorneys led a three-year defense of Illumina. Ultimately, the district court granted our motion for summary judgment disposing of the infringement claims, later affirming its ruling on Life Technologies' motion for reconsideration. As a result, Illumina can continue with its critical work in the field of human genomics.